

EXHIBIT 1

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION
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4 -----
5 IN RE: HIGH-TECH EMPLOYEE)
6 ANTITRUST LITIGATION) No. 11-CV-2509-LHK
7 -----

8
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10
11 VIDEOTAPED DEPOSITION OF EDWARD LEAMER
12 San Francisco, California
13 Friday, October 26, 2012
14 Volume I
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20 Reported by:
21 ASHLEY SOEVYN
22 CSR No. 12019
23 Job No. 1545691
24
25 PAGES 1 - 476

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1 of calculation that's implied by the conduct 16:54:25
2 variables. 16:54:27

3 Q. Did you include one-time compensation 16:54:28
4 events in your average? 16:54:29

5 A. One time compensation events? 16:54:30

6 Q. Sign-up incentives you talk about in your 16:54:32
7 report, for example? 16:54:34

8 A. I often have had the new employees 16:54:35
9 excluded. 16:54:40

10 Q. Did you? 16:54:42

11 A. And in this data set, I'm not entirely 16:54:43
12 sure. 16:54:48

13 Q. Does it indicate you have excluded 16:54:49
14 employees, you have a number of employees on the 16:54:50
15 left-hand side? 16:54:51

16 A. Well, I'd said -- you see note No. 1, it 16:54:56
17 says, "Changes in compensation measured only on 16:54:57
18 employees that did not switch jobs from previous 16:54:59
19 year." 16:55:01

20 Q. You have an opinion that the years 2004 and 16:55:03
21 2011 are significant useful comparisons? 16:55:06

22 A. Well, this is hypothetical. So if you look 16:55:14
23 at this data set, you might think that 2011 was a 16:55:16
24 period of time of rapid expansion in the tech 16:55:25
25 sector, and 2004 was the aftermath of the tech 16:55:26

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1 you to the before and after kind of thinking. 16:56:42

2 Q. Under your Figure 18, both 2010 and 2011 16:56:46

3 were periods of tepid recovery? 16:56:48

4 A. True. 16:56:52

5 Q. You don't distinguish between the two, do 16:56:53

6 you? 16:56:55

7 MR. GLACKIN: Objection, vague. 16:56:55

8 THE WITNESS: Well, like I said before, 16:56:56

9 this is an illustration. This is meant to be a 16:56:59

10 warm-up to the regression analysis. If you find it 16:57:01

11 confusing and you find regression analysis crystal 16:57:10

12 clear, then simply don't read this. 16:57:15

13 BY MR. PICKETT: 16:57:18

14 Q. If we use 2010 instead of 2011, you 16:57:18

15 wouldn't have an average 10 percent increase, would 16:57:23

16 you? 16:57:25

17 A. This was exactly my point is that you have 16:57:25

18 to have a relevant comparison period in order to do 16:57:28

19 the damage estimate. And that's what the regression 16:57:28

20 does, exactly what it does. 16:57:29

21 Q. You put this in, sir, so I am entitled to 16:57:31

22 cross-examine you. 16:57:36

23 A. But I'm telling you your questions are 16:57:38

24 exactly what I want you to be asking, which is what 16:57:39

25 other relevant periods for making a comparison. And 16:57:41

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1 you're raising it -- you're making the step in the 16:57:45
2 right direction to get to regression, which is 16:57:48
3 answering this question in a more complex and more 16:57:52
4 appropriate way, rather than sort of this ad hoc 16:57:54
5 discussion about what is a comparison period and 16:57:55
6 what is not. 16:57:59

7 Q. Why did you use 2011 as your -- part of 16:58:00
8 your benchmark rather than 2010, because it's 3.2 16:58:03
9 percent higher? 16:58:07

10 A. In order to encourage you to ask me why. 16:58:08
11 And that question reveals that you understand why we 16:58:11
12 need to go to regression, that you can't do damage 16:58:14
13 analysis in this simple table. 16:58:17

14 Q. Let me try it again. Why did you use 2011 16:58:19
15 rather than 2010 for part of your benchmark because 16:58:21
16 it's 3.2 percent lower? 16:58:24

17 MR. GLACKIN: Objection, asked and 16:58:26
18 answered. 16:58:26

19 THE WITNESS: There's no liquidation here. 16:58:28
20 We're not doing damage analysis here. We're just 16:58:29
21 illustrating how the before and after works. If you 16:58:30
22 find that confusing, then you don't have to look at 16:58:32
23 it. 16:58:47

24 BY MR. PICKETT: 16:58:47

25 Q. Okay. I don't find it confusing. I want 16:58:47

1 to know why you used 2011 data rather than 2010 for 16:58:50
2 purposes of creating the benchmark based on Figure 16:58:52
3 19? 16:58:52

4 MR. GLACKIN: I'm going to object to 16:58:53
5 that -- that's the third time in a row you've asked 16:58:53
6 the exactly the same question, you've gotten an 16:58:55
7 answer and we're wasting time. 16:58:56

8 THE WITNESS: I'd be happy if you suggest a 16:58:59
9 table to be revised, I would be happy to change that 16:59:01
10 to 2004, '10, '11, take that average and do the 16:59:06
11 damage analysis with respect to that. If you 16:59:10
12 think -- if that's your recommendation, then it's 16:59:10
13 pretty straightforward and make that calculation. 16:59:10

14 BY MR. PICKETT: 16:59:19

15 Q. And you'd be fine with that? 16:59:19

16 A. Well, I don't know that I would be fine. I 16:59:21
17 think we ought to use the regression analysis. The 16:59:23
18 whole point of it it's just that -- as a warm-up of 16:59:26
19 doing regression in order so you can sensibly think 16:59:29
20 about what the control variables are. And you're 16:59:32
21 completely misinterpreting this paragraph. 16:59:34

22 Q. Don't you say in paragraph 136 that, "An 16:59:37
23 estimate of the effect of the Non-Compete Agreements 16:59:39
24 on employee compensation can be found by contrasting 16:59:42
25 compensation during the periods when the Agreements 16:59:50

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1 were in effect with compensation before and after 16:59:54
2 the Non-Compete Agreements"? 16:59:56
3 A. That's what the conduct variable does. It 16:59:58
4 turns on and off according to these periods. 17:00:00
5 Q. So Paragraphs 136, 137, 138, 139, Figure 17:00:05
6 19, paragraph 140 and -- are irrelevant to your 17:00:08
7 report? 17:00:12
8 A. No, 136 is completely relevant. It applies 17:00:13
9 both to the regression analysis and to the table. 17:00:17
10 Table 137, 138, and 139 are -- are a search for 17:00:24
11 appropriate comparison periods. It's a casual 17:00:27
12 informal search. And the goal is to make it clear 17:00:31
13 to you that a casual informal search is not the way 17:00:40
14 to go. We need to use a regression and control for 17:00:44
15 the differences in the periods. 17:00:48
16 Q. Did you engage in any other casual, 17:00:50
17 informal searches associated with any of the other 17:00:52
18 results reported in your report? 17:00:55
19 A. No, I did not. 17:00:57
20 Q. Why did you use one here? 17:00:58
21 MR. GLACKIN: Objection, asked and 17:01:00
22 answered. This would be the fourth or fifth time 17:01:01
23 for the same question. We are wasting time. 17:01:02
24 THE WITNESS: So my impression is, if you 17:01:06
25 look at Figure 20, you're going to find that pretty 17:01:10

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1 off-putting. It's a long regression equation, and 17:01:14
2 the logic -- the fundamental logic that underlies it 17:01:16
3 is what I am trying to get to with those sequence of 17:01:23
4 paragraphs that we're talking about. 17:01:27

5 I'm simply trying to make sure you 17:01:28
6 understand what that regression is all about. 17:01:30

7 BY MR. PICKETT: 17:01:33

8 Q. You consider Figure 19 to be a preliminary 17:01:33
9 analysis? 17:01:37

10 A. No, I don't consider it a preliminary 17:01:37
11 analysis. I consider it an illustrative analysis. 17:01:39
12 The only extent to which you might consider it 17:01:44
13 preliminary, is the fact that you get that 12.9 17:01:50
14 percent damages. But I'm not standing by that. I'm 17:01:54
15 telling that you got to do the regression analysis. 17:01:58
16 This is not how I'm doing damage analysis. I'm just 17:02:03
17 saying how you do it is you compare the period in 17:02:06
18 which the agreements were in place with relevant 17:02:09
19 alternative periods. 17:02:12

20 And you got to think long and hard what 17:02:13
21 those relative alternative periods are, which is 17:02:15
22 what regression does. 17:02:17

23 Q. One factor you used in your regression 17:02:20
24 analysis was firm revenue per employee, do you 17:02:22
25 recall that? 17:02:26

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1 STATE OF CALIFORNIA) ss:
2 COUNTY OF MARIN)
3

4 I, ASHLEY SOEVYN, CSR No. 12019, do hereby
5 certify:

6 That the foregoing deposition testimony was
7 taken before me at the time and place therein set
8 forth and at which time the witness was administered
9 the oath;

10 That the testimony of the witness and all
11 objections made by counsel at the time of the
12 examination were recorded stenographically by me,
13 and were thereafter transcribed under my direction
14 and supervision, and that the foregoing pages
15 contain a full, true and accurate record of all
16 proceedings and testimony to the best of my skill
17 and ability.

18 I further certify that I am neither counsel for
19 any party to said action, nor am I related to any
20 party to said action, nor am I in any way interested
21 in the outcome thereof.

22 IN THE WITNESS WHEREOF, I have transcribed my
23 name this 29th day of October, 2012.
24

25 _____
ASHLEY SOEVYN, CSR No. 12019